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Dr. SUDHIR RAJA RAVINDRAN

Chair

BG 777339

V. BEDHARAJAN

Stamp Vendor

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Ekkattuthangal, Ch-32

Mobile No: 9710019475

BEFORE THE SOLE ARBITRATOR, DR. SUDHIR RAJA RAVINDRAN

.IN REGISTRY

(NATIONAL INTERNET EXCHANGE OF INDIA)

.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

ARBITRATION AWARD

DATED: February 20, 2018

Clark Equipment Company

250 East Beaton Drive,

West Fargo, North Dakota -58078,

United States of America

COMPLAINANT

2018

VERSUS

Lokesh Morada

Registrant Organization: Lokesh Morada,

210 City Blvd West, 32

Orange, California - 92868

United States of America

RESPONDENT/REGISTRANT

DISPUTED DOMAIN NAME: "WWW.BOBCAT.IN"

1. Parties

1.1. The Complainant in this arbitration proceeding is represented by Rachna Bakhru, RNA, Technology and IP Attorneys, 401 – 402. 4th Floor, Suncity Success Tower, Sector -65, Golf Course Extension Road, Gurgaon, Haryana – 122005.

1.2. The Respondent in this arbitration proceeding, according to the WHOIS database accessed via the .IN Registry's website, is Lokesh Morada.

2. The Dispute: The domain name in dispute is BOBCAT.IN. According to the WHOIS search utility of the .IN Registry, the Registrar of the disputed domain name is Name.com LLC (R65 – AFIN)

3. Calendar of Major Events:

S. No	PARTICULARS	DATE
1.	Date on which NIXI'S letter was received for appointment as Arbitrator	09.01.2018
2.	Date on which consent was given to act as an Arbitrator	09.01.2018
3.	Date of appointment of Arbitrator	16.01.2018

4.	Date on which the Hard copy of the complaint was received	18.01.2018
5.	Date on which notice was issued to the Respondent	18.01.2018
6.	Due date for filing of Counter Statement by the Respondent	25.01.2018

4. Procedural History

- 4.1. This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India ("NIXI"). The INDRP Rules of Procedure ("Rules") were approved by NIXI on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.
- 4.2. In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the complaint and appointed Dr. Sudhir Raja Ravindran as the sole arbitrator for adjudicating upon the dispute in accordance with the .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder and the Indian Arbitration and Conciliation Act, 1996 and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.
- 4.3. The Complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution Policy (INDRP).
- 4.4. On January 18, 2018, the Arbitrator issued a notice to the Respondent intimating the Respondent of the appointment of the Arbitrator and calling upon the Respondent to submit his response within seven (7) days, i.e. on or before January 25, 2018.

5. Factual Background:

- 5.1. The Complainant is a Company based in United States of America and has at its core technical competency as an equipment designer and manufacturer. Over the years the

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Complainant has launched and established many well – Known products and brands such as CLARK material handling equipments, BOBCAT loaders and excavators and CLARK – HURTH Driveline Components, DOOSAN large excavator and Wheel loaders, INGERSOLL RAND portable power, BOBCAT tractors and telescopic handlers, and much more. The Complainant states that they have also ventured into new fields such as farm machinery.

5.2. The Respondent registered the disputed name <BOBCAT.IN> on 31th July, 2007.

6. Parties Contentions

6.1. Complainant's Submission:

6.1.1. The Complainant claims that the history of BOBCAT brand goes back to era of 1900s. In 1947, farmer and inventor, Edward Gideon "E.G" Melroe found manufacturing Company. In Gwinner, North Dakota. After the passing of E. G Melroe, his son Cliff Melroe was named the president of of Melroe Manufacturing Company. In 1962, Melroe redesigned and rebranded its skid-steer loader, introduced as model M440 "Melroe Bobcat" skid-steer loader with white and red color scheme. By 1964, 1000'h Bobcat loader was built in Gwinner. In 1967, Bobcat sales accounted for 65% of the company's business. In 1969, Melroe brothers sold their company to Clark Equipment Company (the Complainant herein). By the year 1980, Bobcat celebrated production of its 100,000"" skid-steer loader. In 1995, the Complainant, Clark Equipment Company was sold to Ingersoll Rand Company of Woodcliff Lake, New Jersey and Bobcat was included in the transaction. In 2000, "Melroe Company" name changed to "Bobcat Company," reflecting its primary brand identity. In 2007, Ingersoll-Rand sold its Bobcat business to Doosan Infracore of South Korea. In 2008, Bobcat celebrated 50 years since the production of its first loader and built its 750,000th loader. By the year 2014, Bobcat is the first manufacturer to top 1,000,000 loaders.

6.1.2. The Complainant claims that Owing to the contribution in revamping equipment industry, company founder E.G. Melroe and six family members are inducted into the Association of Equipment Manufacturers (AEM) Hall of Fame. The Hall of Fame

was established in 1993 to recognize, celebrate and preserve the history of outstanding leaders who invented, managed, built and led the off-road equipment industry.

- 6.1.3. The Complainants claims that, The Complainant is the current registered proprietor of the mark BOBCAT. The mark BOBCAT being a coined word, is highly distinctive of Complainant's products and are exclusively associated with the products of the Complainant alone. The mark BOBCAT is well-known in the trade and used in relation to compact equipment for construction, rental, landscaping, agriculture, grounds maintenance, utility, industry, mining, etc. Since its conception as trade name and trademark in 1962 and on account of extensive sales and quality of the products under the BOBCAT mark, the Complainant has established a well-founded international reputation and goodwill in the said trademark.
- 6.1.4. The Complainant claims that, the trademark BOBCAT is well-known around the world in relation to skid steer loaders, compact excavators, compact utility vehicles, compact tractors and other small hydraulic equipments and is inherently distinctive both to the trade and public. The mark BOBCAT through its prior adoption, extensive use, registration and quality of products has become distinctive of the Complainant and indicates and connotes the products of the Complainant exclusively. Consequently, members of the trade and public recognize the mark BOBCAT as distinctive of the business of the Complainant's company alone.
- 6.1.5. The Complainant claims that the Complainant's mark BOBCAT is registered in several countries of the world such as United States, Italy, Canada, Germany, Switzerland, France, India to name a few. In India, the Complainant's mark BOBCAT is registered in its favour with the earliest registration dating back to the year 1977.
- 6.1.6. The Complainant claims that BOBCAT branded products are also extensively sold in India through their authorized dealers which further evidence the fact that the trade and public in India are well aware of the quality, efficacy, goodwill and reputation of the BOBCAT branded products.

- 6.1.7. The complainant further claims that, By virtue of the aforementioned continuous and extensive use, wide spread recognition and global presence of the Complainant through its subsidiaries and affiliates, trade mark BOBCAT has become a renowned name for the consumers and trade alike, worldwide. It is apparent that trade mark BOBCAT has attained the status of a well-known mark across the globe and hence is equally protected. Across all the classes of goods and services as listed in the Nice Classification of Goods and Services. The trade mark BOBCAT has high degree of inherent distinctiveness denoting the products of the Complainant only; has been used extensively over a long period of time and spanning a wide geographical area including in India; has been given tremendous publicity and attained immense popularity; it is well recognized by members of the trade and public. Therefore, the Complainant is entitled to protection against its misappropriation for goods or services whether similar or different in nature to those of the Complainant. Resultantly, the brand and name "BOBCAT" has built up an immense value for itself and thus qualifies for enhanced protection as a 'well-known mark' within the meaning of the Section 2(1) (zg) read with Section 11(6) of the Act. Therefore, the mark/name "BOBCAT" ought to be protected against all sorts of misrepresentations and misuse ranging diverse sectors/ industries which may or may not be allied, more so in case of identical or similar services.
- 6.1.8. The Complainant further states that, the Complainant uses the ubiquitous medium of the Internet to render and advertise its products and services. The Complainant owns the domain name www.bobcat.com, which is accessible throughout the world. The domain name www.bobcat.com was registered by the Complainant on March 28, 1997 as per the extract from WHOIS Search database. The details and/or information about the Complainant's business activities related to BOBCAT products in various jurisdictions around the world is available on its website located at www.bobcat.com.
- 6.1.9. The Complainant states that The Respondent has registered the identical disputed domain name www.bobcat.in with .In Registry. The disputed domain name shows

the registration date as July 31, 2007 which is subsequent to the adoption and use of the mark BOBCAT by the Complainant. The complainant further claims that the disputed domain name incorporates the Complainant's well-known and prior used mark BOBCAT and prior registered domain www.bobcat.com in entirety. The Complainant has not licensed or otherwise authorized or given consent to the Respondent to use/utilize or commercially exploit the Complainant's registered and well known trademark in any manner.

- 6.1.10. The Complainant claims that the disputed domain name www.bobcat.in resolves to webpage which lists out various third party/sponsored links including listing related to Complainant's BOBCAT product. It is submitted that such third party links appearing on the Respondent's website are not authorized by the Complainant. It is explicitly evident that the Respondent is receiving considerable amount from these unauthorized alleged parties by monetizing the disputed domain name. Screenshots of the Respondent's webpage as on December 13, 2017
- 6.1.11. The Complainant further stated that the alleged webpage displayed on the disputed domain name www.bobcat.in shows the message "This domain may be for sale. Backorder this Domain"; it is evident that the Respondent has registered the identical domain name www.bobcat.in in bad faith with the sole purpose of selling for valuable consideration in excess of its documented out-of-pocket costs.
- 6.1.12. The complainant further claims that the Respondent's domain name/web-site appears to be a pay per click website. The disputed domain name has been merely blocked/registered with an intention to attract internet traffic and benefit from the sale of a famous domain name. The Respondent's web-site contains 'sponsored listings' only and therefore there is no legitimate business interest of the Respondent in the said domain name. The sole purpose of registering the disputed domain name by the Respondent is to derive illegal profits.
- 6.1.13. The Complainant states that it is immediately obvious in the present case that disputed domain name www.bobcat.in is identical to the Complainant's BOBCAT mark, save for the .in generic top level domain which is required for technical

reasons and does not serve to distinguish the disputed domain name from the Complainant's trademark. In support of its contentions. The Complainant further claims that it has not licensed or otherwise permitted the Respondent to use the trademark/domain consisting of or incorporating the BOBCAT trademark.

6.1.14. The Respondent registered the Domain Name in the year 2007; several decades after the Complainant invested millions of dollars in popularizing and seeking registration of BOBCAT mark and domain name www.bobcat.com. Moreover, by the time Respondent registered the disputed domain name; the Complainant had generated hundreds of millions of dollars in revenue under the BOBCAT mark and had already attained the status of well-known/famous mark. Accordingly, it is evident that the Respondent was well aware of Complainant's prior rights in the BOBCAT mark and domain name www.bobcat.com at the time of registering the disputed domain name in the year 2007.

6.1.15. The complaint claims that the Respondent is not commonly known by the name or nickname of the disputed domain name or any name containing Complainant's BOBCAT mark. The information listed on Whois Search Database for the disputed domain name makes no mention of the BOBCAT mark as Respondent's name or nickname. The Respondent has not been authorized by the Complainant to register or use the mark/domain name Bobcat.

6.1.16. The Complainant claims that the disputed domain name was acquired by the Respondent with a clear intention to make money by selling at higher prices. In this regard, the Complainant further claims that it is evidently displayed that "This domain may be for sale. Backorder this Domain". With an intention to acquire the disputed domain name, the Complainant's representative made an offer on domain purchasing website www.sedo.com to purchase the disputed domain wherein the minimum offer bid was set at USD 90. To the Complainant's shock, the Respondent's last counter offer to sell the disputed domain name was cited at staggering USD 4500. Therefore the Complainant further claims that the Respondent has registered the disputed domain name primarily for the purpose of

selling, renting, or otherwise transferring the domain name registration to the Complainant for excessive consideration which is in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name.

6.1.17. The Complainant further claims that the Respondent is a habitual cyber squatter who has registered several domain names comprising the trademarks of world renowned brands evidencing its dishonest intention to make illegal gains/profit by selling the unauthorized domain names to rightful trademark owners at higher consideration. In several UDRP cases, the panellists have concluded that several instances of the Respondent's pattern of conduct establishes bad faith which includes a scenario where a Respondent has registered simultaneously or otherwise, multiple trademark-abusive domain names corresponding to the distinct marks of individual brand owners.

6.1.18. The Complainant further states that the Complainant conducted a "Reverse Whois" search. This search returned a list of 179 domain names registered by Respondent, which contain, aside from Complainants' marks, numerous other famous or well-known third party marks. In the Panel's opinion, this list demonstrates that Respondent has clearly engaged in a pattern of registering domain names in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, and that the registration of the disputed domain names was in bad faith under Policy paragraph 4(b)(ii).

6.1.19. The complainant claims that the Respondent's choice of identical disputed domain name is not a coincidence and is definitely directed to illegally encash upon goodwill and reputation of the Complainant. Accordingly, the disputed domain name was registered and has been used in bad faith.

6.1.20. In support of its contentions, the Complainant/s relied on the decisions in the cases of Uniroyal Engineered Products v Nauqa Network Services WIPO Case No. D2000-0503, Robbie Williams v. Howard Taylor WIPO Case No. D2002-0588, Expedia Inc. and Hotels.com L.P. v. Arabia Horizons Tours LLC WIPO Case No. DAE2014-0005, Charles Schwab & Co... Inc. v. Josh Decker d/b/a I GOT YOUR TIX, WIPO Case No.

D2005-0179, Young Genius Software AB v. MWD, James Vargas WIPO Case No. D2000-0591, SAP Systeme/ SAP India Systems v. Davinder Pal Singh Bhatia WIPO Case No. D2001-0504, Croatia Airlines d.d. v. Modern Empire Internet Ltd. WIPO Case No. D2003-0455, Clerical Medical Investment Group Limited v. Clericalmedical.com (Clerical & Medical Services Agency) WIPO Case No. D2000-1228, Cofra Holding AG v. Mr Obada Alzatari, WIPO Case No. D2014-1709, Royal Bank of Canada v. Namegiant.com WIPO Case No. D2004-0642, Arla Foods Amba and Meteriforeningen Danish Dairy Board v. Mohammad Alkurdi, WIPO Case No. D2017-0391 and SAP AG v. Peifang Huang WIPO Case No. D2014-0928, Julv 28, 2014.

6.1.21. The Complainant/s requests for the following relief: "that the disputed domain name <**BOBCAT.IN**> be transferred to the Complainant and costs be awarded in favour of the Complainant".

6.2. Respondent:

6.2.1. The Respondent did not file any reply to the Complaint.

7. Discussion and Findings

7.1. Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules.

7.2. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

7.2.1. The disputed domain name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights, and

7.2.2. The Respondent has no rights or legitimate interests in respect of the domain name; and

7.2.3. The Respondent's domain name has been registered or is being used in bad faith.

7.3. Identical or Confusingly Similar

- 7.3.1. The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.
- 7.3.2. It is well established that trademark registration is recognized as prima facie evidence of rights in a mark. The Complainant by filing documents of its registered trademarks has established that it has rights in the trademark "**BOBCAT**" in India. The documents filed by the Complainant also show that it has used the mark extensively for a considerable period. Evidence of use of the mark for several years by the Complainant undoubtedly shows its rights in the mark.
- 7.3.3. The Complainant has established that it has rights in the trademark "**BOBCAT**".
- 7.3.4. The disputed domain name incorporates the trademark "**BOBCAT**" in its entirety and this is adequate to prove that the disputed domain name is either identical or confusingly similar to the mark. A domain name that entirely incorporates a Complainant's mark is sufficient to establish the confusing similarity of the disputed domain name with the mark. This position was upheld in *Akshaya Pvt. Ltd. v. Mr. Prabhakar Jeyapathy* (INDRP/277).
- 7.3.5. The Arbitrator finds that the Complainant has satisfied the first element under paragraph 4 of the Policy.

7.4. Rights and Legitimate Interests

- 7.4.1. The second element requires the Complainant to show that the Respondent has no rights and legitimate interests in the disputed domain name.
- 7.4.2. The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name and that the Respondent has registered the domain name "**BOBCAT.IN**" mala fide with the sole motive to encash upon the goodwill and reputation of the Complainant.
- 7.4.3. The Complainant further states that the Respondent having no legitimate interest is corroborated by the fact that the domain in question displays various sponsored links and "pay-per-click" links.

7.4.4. Under Paragraph 7 of the Policy, a Respondent or a registrant can establish rights in the domain name, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) the registrant is making legitimate, non-commercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

7.4.5. The Respondent has not responded in these proceedings and has not provided any material to show any rights in the disputed domain name. The Arbitrator finds no material on record to show that the Respondent is commonly known by the disputed domain name. If the Respondent does not put forward any evidence that it is known by the disputed domain name, it is a strong basis to infer that the Respondent lacks rights. Further, there is no indication from the material on record that the Respondent is using the disputed domain name for any legitimate purposes such as non-commercial fair use purposes.

7.4.6. The use of the Complainant's mark in the disputed domain name in the Arbitrator's view is likely to mislead the public and Internet users that the disputed domain name may refer to the Complainant. Misleading users by incorporating a third party's trademarks in a domain name gives a false impression to users and does not constitute a *bona fide* use under the Policy. This view has been upheld in *Six Continental Hotels, Inc v. The Hotel Crown* (INDRP/151).

7.4.7. The Arbitrator finds the Complainant have made a prima facie case that the Respondent has no rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

7.5. Bad Faith

7.5.1. Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith. Proof of bad faith is a separate requirement. Information that is relevant to a consideration of the other

ingredients of a claim can be relevant to bad faith inquiry, but it usually will not be sufficient to meet the Complainant's burden of proof.

7.5.2. The Complainant have asserted that the Respondent has registered and uses the disputed domain name in bad faith for the reasons that the Complainant has well-established rights in the trademark "**BOBCAT**", and that the Respondent seeks to exploit its famous mark to attract Internet users for commercial purpose.

7.5.3. The Complainant's prior adoption of the mark predates the Respondent's domain name registration and the registration of a name that is so obviously connected with the Complainant is suggestive of the Respondent's bad faith.

7.5.4. The Respondent's intention to sell the disputed domain name is apparent from the advertisement for sale of the disputed domain name as well as. This indicates that the Respondent has engaged in registration of the disputed domain name is in bad faith. In a previous decision in the case of *Vodafone Group PIC v. Rohit Bansal*, Case No. INDRP/052, wherein the Respondent through various e-mails indicated that he would transfer the disputed domain name to the Complainant in exchange for certain costs, the learned Arbitrator held the disputed domain name to be identical and confusingly similar to the registered trademark of Complainant in which the Complainant has rights and the Respondent has no right or legitimate interests in respect of the domain name and the Respondent's domain name has been registered or is being used in bad faith.

7.5.5. The Arbitrator finds the Complainant have established its prior adoption and rights in the trademark "**BOBCAT**". Further, the Complainant's trademark applications were clearly made before the disputed domain name was registered. The evidence on record shows that the Complainant's trademark is well known. Thus the choice of the domain name does not appear to be a mere coincidence, but is a deliberate use of a well-recognized mark to attract unsuspecting users to the Respondent's website, such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration under the Policy.

- 7.5.6. The registration of a domain name that is confusingly similar or identical to a famous trademark by an entity that has no relationship to the mark is sufficient evidence of bad faith registration and use. Internet users may falsely believe that the Respondent's domain name is being operated or endorsed by the Complainant. This view was upheld in the decision in *BASF SE v. GaoGou*, (INDRP/752).
- 7.5.7. Under Paragraph 6 (iii) of the Policy, if the registrant of the domain name in dispute, has used the domain name to intentionally attract Internet users to the Registrant's website or other online location by creating a likelihood of confusion with the trademark of another, it is considered evidence of bad faith. The Arbitrator finds the circumstances here suggest that there is no other reasonable explanation for the registration of the disputed domain name by the Respondent.
- 7.5.8. For the reasons discussed, the Arbitrator finds the disputed domain name has been registered and used in bad faith under the Policy.
- 7.6. The above-mentioned contentions and submissions of the Complainant/s have not been rebutted by the Respondent, as such, they are deemed to be admitted by them.

8. Decision

- 8.1. The Complainant has successfully established the three grounds required under the Policy to succeed in these proceedings.
- 8.2. For reasons discussed, the .IN Registry of the NIXI is hereby directed to transfer the domain name <**BOBCAT.IN**> to the Complainant without any costs.
- 8.3. The Award is accordingly passed on this the 20th day of February, 2018.

Place: Chennai



Dr. Sudhir Raja Ravindran
Sole Arbitrator